



C.M.A(MD)No.353 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.01.2024

Delivered on : 07.02.2024

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

C.M.A(MD)No.353 of 2023

M/s.National Insurance Company Limited,
Branch No.1, Represented by its Manager,
Door No.33, Bharathidasan Salai,
(Promenade Road), Cantonment,
Tiruchirappalli Town,
Tiruchirappalli District-620 001.

... Appellant/3rd Respondent

Vs.

1.Chitra
2.V.Venkata Krishnan
3.Minor V.Aparna
(R3 is represented by her mother and
natural guardian, the first respondent)
4.Prakash
5.Mohanarengan
(R2 is attained as Major and the guardianship
of his mother is discharged vide Court order
dated 10.11.2023)



C.M.A(MD)No.353 of 2023

WEB COPY

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the award passed in M.C.O.P.No.196 of 2018 dated 12.07.2022 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Karur.

For Appellant	: Mr.J.S.Murali
For R1 to R3	: Mr.I.Velpradeep
For R4 & R5	: No appearance

JUDGMENT

DR G. JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

This Civil Miscellaneous Appeal has been filed by the appellant, Insurance Company against the award, dated 12.07.2022 passed in M.C.O.P.No.196 of 2018 by the Motor Accidents Claims Tribunal, Principal District Court, Karur.

2.The first petitioner herein is the wife of the deceased Venkata Subramanian and the second and third petitioners are his children.

3.For the sake of convenience, the parties will be referred to herein according to their litigative status as mentioned before the Tribunal.



C.M.A(MD)No.353 of 2023

WEB COPY

4. According to the petitioners, on 18.01.2018 at about 19.45 hours, while the deceased Venkata Subramanian was driving his vehicle bearing Registration No.TN-47-AH-5866 from Trichy to Pudukottai road, the driver of the Bus bearing Registration No.TN-45-AQ-6556 which came in the opposite direction in a rash and negligent manner, dashed against the deceased Venkata Subramanian. Due to which, the deceased Venkata Subramanian sustained head injuries. Immediately the deceased was taken to Apollo Hospital, Tiruchirapalli, where he was admitted as inpatient from 18.01.2018 to 22.01.2018. In spite of best treatment given to the deceased, he succumbed to the injuries. The petitioners further states that at the time of accident, the deceased was aged about 43 years and was working as a Finance Manager in Reliance Jio. Hence, the petitioners have come forward with the claim petition claiming compensation of Rs.2 crore.

5. The said petition was resisted by the first respondent, qua driver of the bus, contending that the accident had occurred only due to the negligence on the part of the deceased. Similarly, the second respondent has also reiterated the contention put-forth by the first respondent. It is



C.M.A(MD)No.353 of 2023

WEB COPY

further contended that, though the bus bearing Registration No.TN-45AQ-6556 is a Spare Bus, the same has got temporary permit issued by the Regional Transport Officer. Hence, the second respondent contended that since they have insured the vehicle with the third respondent, they are not liable to pay any compensation.

6.However, the third respondent, Insurance Company has took a specific defence that the second respondent bus bearing Registration No.TN-45-AQ-6556 has no permit to ply the bus in the route between Trichy to Pudukottai and that, the bus involved in the accident was a spare bus. Therefore, they strenuously pleaded that the second respondent has violated the policy condition. Hence, the respondents prayed to dismiss the application.

7.Before the Tribunal, on the side of the petitioners, three witnesses were examined as P.W.1 to P.W.3 and seventeen documents were marked as Ex.A.1 to Ex.A.17. On the side of the respondents, six witnesses were examined as R.W.1 to R.W.6 and nine documents were marked as Ex.R.1 to Ex.R.9.



C.M.A(MD)No.353 of 2023

WEB COPY

8.The Tribunal, after having considered the oral and documentary evidence and also upon considering the materials on record, has awarded a sum of Rs.1,15,95,500/- as compensation to the petitioners along with interest.

9.Being not satisfied with the award passed by the Tribunal, the third respondent, Insurance Company has filed the instant Civil Miscellaneous Appeal.

10.The learned counsel appearing on behalf of the third respondent/appellant would vehemently contend that the Tribunal, in spite of the fact that the income of the deceased for the latest assessment year is lesser than the income of the previous assessment, the Tribunal wrongly took the previous year higher income, which is contrary to law. It is the further contention of the learned counsel for the third respondent/appellant that the Tribunal ought to have either taken into consideration of the average income or the income of the latest assessment year. The learned counsel would also further contend that the Bus operated by the second respondent in the route between Pudukottai



C.M.A(MD)No.353 of 2023

WEB COPY

and Trichy was a Spare Bus bearing Registration No.TN-45-AQ-6556, which has no permission to ply in the same route. Therefore, he would strenuously contend that, since there is a palpable policy violation, disputed their liability to pay compensation. Beside they also disputed the negligence on the part of the first respondent.

11.Per contra, the learned counsel for the petitioners/respondents would contend that there was a permit for plying the bus bearing Registration No.TN-45-AQ-6556 and that, the income, which was taken into consideration by the Tribunal, is on the strength of the ratio of the Hon'ble Supreme Court held that in ***Malarvizhi and Others-Vs-United Insurance Company Limited and Another***, reported in (2020) 4 ***Supreme Court Cases 228***. The learned counsel for the petitioners/respondents would contend that the second respondent has miserably failed to prove the rash and negligent driving of the driver of the bus and he cannot take such a defence at this stage in the absence of the evidence of driver and the owner of the vehicle. The learned counsel for the petitioners/respondents would also contend that at the relevant point of time, the bus belongs to the second respondent, which was



C.M.A(MD)No.353 of 2023

WEB COPY having necessary permit to ply between Pudukottai and Trichy.

Therefore, it is the submission of the learned counsel for the petitioners that the award passed by the Tribunal is just compensation and based on the materials and no ground is made out to interfere with the same.

12.We have given our anxious consideration to the submission made on either side.

13.While cogitating the submissions made by either side counsel for effective disposal of the instant appeal, this Court needs to answer on following two points.

(i)Whether the finding of the Tribunal regarding annual income of the deceased is correct.

(ii)Whether at the relevant point of time, the bus bearing Registration No.TN-45-AQ-6556 had necessary permit to ply between Pudukottai and Trichy, and as a natural corollary, this Court has to decide whether the award passed by the Tribunal is in order.

14. Let us consider the above points one after another.



C.M.A(MD)No.353 of 2023

WEB COPY

15. In respect of the income of the deceased, the petitioners submitted the appointment order of the deceased, which also has clause regarding his increment. More pertinently, the petitioners have submitted the income tax returns of the assessment year from 2015-2016, 2016-2017, 2017 – 2018 of the deceased. The Tribunal concluded that the highest income pertains to the assessment year 2016 – 2017 should be taken into consideration for calculation. During the relevant assessment year, the net income of the deceased was Rs.7,60,821/- after paying the income tax of Rs.1,19,856/-.

16. In this regard, the learned counsel for the 3rd respondent/appellant would submit that the procedure adopted by the tribunal in taking the higher income is without any basis and has no legal backup. But, we are not in agreement with the submissions made by the learned counsel for the appellant. At this juncture, it is pertinent to mention here that the Tribunal has relied upon the judgment of the Hon'ble Supreme Court in *Malarvizhi case(cited supra)*, wherein, the Hon'ble Supreme Court has agreed with the view expressed by this Court for taking higher income while determining the compensation. Therefore, this Court could not find any error in the approach of the Tribunal, as a



C.M.A(MD)No.353 of 2023

concomitant also, we have no hesitation to concur with the income determined by the Tribunal.

17.Coming to the age of the deceased, the Tribunal has rightly relied upon the 12th Std., mark sheet of the deceased Venkata Subramanian, which is marked as Ex.P.9 and rightly determined the age of the deceased as 43. In respect of the dependency, the first petitioner being the wife and the petitioners 2 and 3 being the children of the deceased, which factum was vindicated through Ex.P.8-Legal Heirs Certificate there are three dependants. Therefore, with these factors the Tribunal applied the ratio of the Hon'ble Supreme Court held in ***National Insurance Co., Ltd -Vs- Pranay Sethi and others*** reported in (2017) 16 SCC 680 and in ***Sarala Verma and others-Vs-Delhi Transport Corporation***, reported in (2009) 6 SCC 121, has considered the future prospects at 25% and also deducted 1/3rd towards personal expenses. Further, the Tribunal adopted the correct multiplier of '14' and ultimately determined the loss of income of the deceased are dependency of the petitioner at Rs.1,15,15,000/-. We are in full agreement in respect of the above calculation.



C.M.A(MD)No.353 of 2023

WEB COPY

18.The Tribunal has also considered compensation towards conventional heads are awarded Rs.46,000 and Rs.17,250/- towards the loss of consortium to the first petitioner, and loss of estate and funeral expenses respectively. However, the impugned award has minor infirmity for not awarding compensation to the petitioners 2 and 3 towards loss of love and affection. Therefore, apart from the quantum, awarded by the Tribunal, the petitioners are entitled to have an additional compensation of Rs.92,000/-.

19.Now, we must answer the next line of argument put-forth by the learned counsel for the 3rd respondent/appellant. It is their contention that at the relevant point of time on account of absence of permit for the insured vehicle, there was a breach of policy condition. The 3rd respondent contended that the second respondent plied the bus without having necessary permit and that the bus bearing Registration No.TN-45-AQ-6556 was only a Spare Bus and not a transport bus. In this regard, the Tribunal has elaborately considered the various aspects and also considered the evidence of R.W.3, who is the staff of the Regional Transport Office, Trichy and also referred to Ex.R.4 document submitted



C.M.A(MD)No.353 of 2023

WEB COPY

by the 3rd respondent. The same palpably manifest on the fatal day of 18.01.2018 the spare bus bearing Registration No.TN-45-AQ-6556 had a permit to operate as a transport bus between Pudukottai and Trichy. We have also perused Ex.R.4, wherein, there is an entry in respect of the permit given to the second respondent bus bearing Registration No.TN-45-AQ-6556 for the date 18.01.2018 qua the date of accident.

20.However, the learned counsel for the appellant/3rd respondent would contend that when they obtained information under Right To Information Act, in EX.B.7 the Regional Transport Officer gave a reply that such permit could not be produced as it has been destroyed. Therefore, the learned counsel contended that Ex.R.4 would not be relied. We are not in agreement with the submissions made by the learned counsel for the appellant for the simple reason that Ex.R.4 was marked only through R.W.3 who was examined at the instance of the third respondent. Furthermore, there is a presumption attached to the Government actions under Section 114 of the Indian Evidence Act. Therefore, the reliance placed on Ex.R.4 by the Tribunal is perfectly in order. As a matter of fact there is no dichotomy between Ex.R.4 and the



C.M.A(MD)No.353 of 2023

WEB COPY

RTI rely Ex.R.7. Further, Ex.R.5 the copy of the temporary permit produce by the 2nd respondent through R.W.5 would also believe the case of the third respondent. Therefore, the contention put-forth by the appellant/Insurance Company is not sustainable. On the other hand, the finding recorded by the Tribunal is well merited and deserved to be confirmed.

21.Eventually, coming to the quantum of compensation, as we have already discussed, we are in full agreement with the quantum under four different heads awarded by the Tribunal. But according to the ***Pranay Sethi's case(cited supra)***, the children of the deceased are entitled for compensation towards loss of love and affection. Towards loss of love and affection for the 2nd and 3rd petitioners, this Court awards a sum of Rs.46,000/- each in addition, to the award amount already passed by the Tribunal. Thus, we are of the firm view that there is no merit in the appeal. Hence, deserves to be dismissed.

22.Thus, the compensation awarded by the Tribunal is modified as follows:



C.M.A(MD)No.353 of 2023

WEB COPY

S.No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Remarks
1.	Loss of Income	Rs.1,15,15,000/-	Rs.1,15,15,000/-	Confirmed
2.	Loss of consortium to the first petitioner	Rs.46,000/-	Rs.46,000/-	Confirmed
3.	Loss of estate	Rs.17,250/-	Rs.17,250/-	Confirmed
4.	Funeral Expenses	Rs.17,250/-	Rs.17,250/-	Confirmed
5.	Loss of love and affection to the petitioners 2 and 3	Nil	Rs.92,000/-	Granted
Total		Rs.1,15,95,500/-	Rs.1,16,87,500/-	Enhanced

23.In the result, the Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is hereby enhanced from Rs.1,15,95,500/- to Rs.1,16,87,500/- together with interest at the rate of 7.5% p.a., from the date of claim petition till the date of deposit. The appellant, Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks(8) from the date of receipt of a copy of this order.



C.M.A(MD)No.353 of 2023

WEB COPY

24. On such deposit, the first petitioner is entitled to Rs.46,87,500/- and the second petitioner is entitled to Rs.35,00,000/- and the third petitioner is entitled to Rs.35,00,000/-. The petitioners 1 and 2/claimants 1 and 2 are permitted to withdraw their share in the award amount along with accrued interest and costs, less the amount, if any already withdrawn. In respect of the share of minor third petitioner/third claimant, the same shall be deposited in any one of the nationalised Bank in fixed deposit initially for a period of three years, till she attains majority. The first petitioner/first claimant, guardian of minor third petitioner/third claimant is permitted to withdraw the interest from the deposit, once in three months directly from the Bank, and utilize the same for the welfare of the minor third respondent. The petitioners/respondents are directed to pay the excess Court fee, if any, towards the enhanced award amount. Registry is directed to draft the decree only after payment of excess Court fees, if any.

(G.J.,J.) (C.K.,J.)
07.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No



C.M.A(MD)No.353 of 2023

WEB COPY

To

- 1.The Motor Accidents Claims Tribunal,
Principal District Court,
Karur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.353 of 2023

DR G. JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.
Ns

C.M.A(MD)No.353 of 2023

07.02.2024